

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-213144

DATE: October 24, 1983

MATTER OF: Professional Material Handling, Inc.

DIGEST:

1. Protest against award to a competitor is not timely where the protest was filed with GAO more than 10 working days after the protester knew of the basis of protest. Moreover, to the extent the protest is directed to a solicitation defect, it should have been filed before bid opening.
2. There is no legal right to advance notice of an impending award to facilitate a protest.

Professional Material Handling, Inc. protests award to Lift Truck Sales Company under Department of the Army invitation for bids No. DAAA03-83-B-0143 for 24 forklift trucks. Bids were solicited on a brand name or equal basis. The protester says it submitted the apparent low bid which was improperly rejected because it failed to comply with an unduly restrictive requirement for electric hand control. The protester also says the Army improperly frustrated Professional's intention to file a pre-award protest by failing to give advance notice of intent to make award to the second low bidder. In any event, Professional says, the awardee's second low bid is not equal to the brand name item.

We dismiss all of the protest except that portion alleging that Professional was not given advance notice of intent to make award. Section 21.2(b)(2) of our Bid Protest Procedures, 4 C.F.R. part 21 (1983), requires that a bid protest against other than a solicitation impropriety be filed not later than 10 working days after the basis for protest is known or should have been known. We received Professional's protest on September 23, 1983, more than 10 working days after the firm learned, on August 30, of the Army's action. Professional appears to have known at that time the reason its own bid was rejected and the characteristics of the product the second low bidder had offered, and thus should have known of its basis for protest with respect

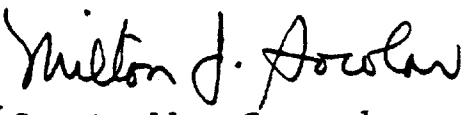
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B-213144

to both matters. Moreover, under section 21.2(b)(1) of our procedures, a defect which is apparent prior to bid opening, such as an unduly restrictive requirement, must be protested prior to bid opening. In the circumstances, this part of the protest is untimely.

Professional's complaint that the Army failed to give it advance notice of intent to make award is timely because that portion of the protest was lodged with the contracting officer by mailgram on or about September 1, 1983. This part of the protest is denied, however, because there is no legal requirement that such notice be given.

The protest is dismissed in part and denied in part.

for 
Comptroller General
of the United States